



August 14, 2001

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2001-3561

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150729.

The Texas Lottery Commission (the “commission”) received a request for “any documents submitted by GameTech International, Inc. to the [commission] or considered by the [c]ommission concerning the ‘Diamond Too’ electronic cardminding device as referenced in the May 17, 2001 Attorney General opinion request signed by Chairman Clowe[.]” You state that some of the requested information has been released to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. Additionally, you assert that some of the submitted information may contain proprietary information that is protected from disclosure under section 552.110 of the Government Code. You state that you have notified GameTech International, Inc. (“GameTech”) of the request for information. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions you claim and the arguments submitted by GameTech and reviewed the submitted information.

First, you contend that the information you have marked in Exhibits B and C is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. Section 552.107(1) of the Government Code excepts information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional

Conduct, this office has determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. We agree that the information you have marked in Exhibits B and C reflects client confidences that the commission may withhold under section 552.107(1).¹

Next, you contend that GameTech "wishes to assert a claim of confidentiality based on Sections 552.101 and 552.110" with respect to the information in Exhibits D and E. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. The governmental body, or interested third party, raising the commercial or financial information prong of this exception must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); Open Records Decision No. 661. (1999); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. cir. 1974).

GameTech asserts that Exhibits D and E contain confidential, proprietary information the disclosure of which would cause it significant competitive harm. After reviewing the information at issue and the arguments set forth by GameTech, we conclude that GameTech has demonstrated that substantial competitive injury would result from disclosure of the information in Exhibits D and E. Therefore, the information in Exhibits D and E must be withheld under section 552.110(b) as commercial or financial information.

To summarize, we conclude that: (1) the commission may withhold the information it has marked in Exhibits B and C under section 552.107(1); and (2) the commission must withhold the information in Exhibits D and E under section 552.110(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal

¹As we are able to make this determination, we need not address your other claimed exception.

by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 150729

Enc: Submitted documents

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(w/o enclosures)